

OCT 3 0 2006

RSL-2006- 07

MEMORANDUM TO ASSISTANT REGIONAL ADMINISTRATORS, PBS

1P, 2P, 3P, 4P, 5P, 6P, 7P, 8P, 9P, 10P, WP

REGIONAL REALTY SERVICES OFFICERS

FROM:

CHRISTOPHER REUTERSHAN

ASSISTANT COMMISSIONER FOR OF FICE OF

NATIONAL CUSTOMER SERVICES MANAGÉMENT - PQ

SUBJECT:

Airport Leasing for the Transportation Security Administration

1. <u>Purpose</u>. This Realty Services Letter issues procurement tools and instructions for realty specialists that are customized for leasing airport space for the Transportation Security Administration (TSA).

2. Background.

- A. The Office of National Customer Services Management, regional customer services directors, and regional account managers developed a Customer Business Plan for TSA with a service delivery model that designates "a single airport leasing specialist within each region" to TSA.
- B. On March 2, 2006, the Assistant Commissioner for the Office of National Customer Services Management notified the Assistant Regional Administrators (ARAs) that the plan was being put into effect and for regions to designate a leasing specialist.
- 3. <u>Effective Date/Expiration Date</u>. This memorandum and attachments are effective on the date of issuance and will expire 12 months from the date of issuance unless extended.
- 4. Cancellation. None.
- 5. <u>Applicability</u>. These instructions apply to all TSA continuing need requirements for support and administrative space (such as office, break, training, and storage) but not security checkpoint screening areas (baggage and passenger screening areas) on airport property. By law, security checkpoint screening areas are provided to TSA free of charge by the airport authority or owner. On-airport property is defined here as any space leased from the airport authority or owner within the boundaries of the airport's property line.
- 6. <u>Instructions/Procedures</u>. Each PBS ARA must designate a leasing specialist to execute all TSA leases on airport property. The leasing specialist must use the following instructions and lease documents for all TSA space acquisitions on airport property.

- A. <u>Justification for Other than Full and Open Competition (JOFOC)</u>. The leasing specialist must use the attached Justification for all TSA continuing need requirements on airport property. In addition, the leasing specialist must place a sole source advertisement, using the language attached, with either FedBizOpps or the appropriate local media for all requirements regardless of square footage. Locations off airport property must be competed on a full and open basis. Space acquired using the JOFOC must be designated "non-cancelable" in the Occupancy Agreement.
- B. Acquisition Plan. The GSA leasing specialist must use the attached Acquisition Plan for all TSA on-airport continuing need requirements exceeding the simplified acquisition threshold and all extensions regardless of dollar amount. The leasing specialist must notify TSA of lease expiration dates at least 18 months in advance and immediately commence procurement planning. The leasing specialist must prepare the acquisition plan at least 12 months in advance of lease expiration date. The ARA or designee must approve the Acquisition Plan with the lease action clearly identified. If a designee is approving for the ARA, the designee's signature must be in the ARA's signature block. The leasing specialist must place a copy of the Acquisition Plan in the lease file. The ARA's approval is in addition to the approvals required by the General Services Acquisition Regulations (GSAR), section 570.405.
 - 1) Continuing need lease actions for a term greater than one year must be either succeeding or superseding.
 - 2) Extensions greater than 12 months are not appropriate unless extraordinary circumstances compel otherwise. If an extension is the only viable course of action, the Acquisition Plan must clearly state the reason why. The ARA or designee must approve the Acquisition Plan with the lease action clearly identified. A copy of the Acquisition Plan must be placed in the lease file. The ARA's approval is in addition to the approvals required by GSAR, section 570.405.
- C. <u>Floodplains</u>. The PBS Office of Applied Science developed the following protocol for TSA on-airport leases to comply with Executive Order 11988, Floodplain Management (42 F.R. 26951; May 24, 1977):
 - 1) It is known that a number of U.S. airports are located in floodplains. Therefore, the leasing specialist must contact the regional environmental quality advisor (REQA), attachment 4, with the complete regional inventory of TSA on-airport leases to ascertain the floodplain status of each site. The REQA must then verify whether or not the space to be leased is in a 100-year floodplain or 500-year floodplain.
 - i. If found to be in a 100-year floodplain:
 - The REQA must contact the airport facility manager to determine previous floodplain analysis activities and mitigation measures implemented by the airport; issue GSA's determination notice; and provide this determination notice to the leasing specialist who will post it for 30 days on or adjacent to the front door of TSA's leased space.
 - ii. If found to be in a 500-year floodplain:
 - a. The REQA will determine whether the TSA activity to be conducted in the leased space is a "critical action," as defined in GSA's Floodplain Management Desk Guide by sending a letter

- using the attached template, addressed to TSA's Office of Real Estate Services.
- b. If TSA confirms that it is not a critical action, place TSA's response letter in the lease file.
- c. If TSA confirms that it is a critical action, follow the steps outlined above for facilities in the 100-year floodplain.
- Copies of any of the documents generated or received during or as a result of the above steps must be placed in the lease file, with the dates, and dates of posting, noted.
- D. Compliance with the National Environmental Policy Act (NEPA). GSA's NEPA implementing regulations, the NEPA Desk Guide, recognize that lease extensions, renewals or succeeding leases can be categorically excluded (CATEX) from NEPA analysis. In particular, §5.3(e) sets forth an "automatic CATEX" for such actions in recognition that the chances of significant environmental impacts from such actions "are so extremely limited that review of each such action is not warranted." The Desk Guide recognizes that any activity that is otherwise subject to an automatic CATEX could have the potential for a significant impact and require some level of NEPA analysis due to extraordinary circumstances. However, the determination here is that the above mentioned lease actions, for TSA on-airport continuing need requirements, meet the standard for this automatic CATEX. The leasing specialist must document this determination in the lease file, Tab II, Pre-Solicitation, with the following notation: "This lease action [specify which type it is: extension, renewal or succeeding lease] meets the definition of an activity that meets the requirement of an automatic CATEX, as specified in the GSA PBS NEPA Desk Guide, §5.3(e)."
- E. Federal Aviation Administration (FAA) Sponsor Assurances. A summary and cross reference of the GSA general clauses required by law and the general clauses that are duplicated in the FAA's Sponsor Assurances are attached for the benefit of the realty specialist in negotiating the inclusion of clauses with airport authorities.
- F. <u>TSA Approvals</u>. TSA's Office of Real Estate Services must approve all acquisition plans, solicitations and lease documents for TSA leases on airport property. The GSA leasing specialist must give TSA 7 working days to respond; after 7 days, the leasing specialist may proceed.
- G. These instructions and documents are available on PBS InSite and on www.gsa.gov/leasing under the "Realty Policy and Tools" section, "Realty Services Letters" subheading.

Attachment 1: JOFOC

Attachment 2: Sole Source Advertisement Language

Attachment 3: Acquisition Plan

Attachment 4: Regional Environmental Quality Advisors

Attachment 5: Floodplain Protocol and Determination Notice

Attachment 6: Floodplain Critical Action Letter to TSA

Attachment 7: FAA Sponsor Assurances Summary

U.S. GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

1. Identification and description of action being approved:

This class justification for other than full and open competition (FAR Subpart 6.3) is for use by General Services Administration (GSA) contracting activities in the acquisition of support and administrative workspace for the Transportation Security Administration (TSA) where required to be on airport property. TSA security checkpoint screening areas and requirements that are not required to be on airport property are not covered by this justification. The TSA was created by Public Law 107-71 and is responsible for the day-to-day Federal civil aviation security, screening operations for passenger air transportation, and intrastate air transportation. TSA requires space at every airport in the United States of America and its possessions and territories having scheduled commercial airline service.

2. Description of services and/or supplies required:

This justification applies to all TSA continuing need requirements for support and administrative workspace (such as office, break, training, and storage space) that are required to be on airport property. There are currently 441 locations under lease. On average, each location is approximately 3,000 square feet.

3. Identification of Statutory Authority:

An agency may use procedures other than competitive procedures when the property or services needed are available from only one responsible source and no other type of property or service will satisfy the needs of the agency, 41 U.S.C. 253 (c)(1).

4. Demonstration that the acquisition requires use of the authority cited:

FAR 6.302-1, which implements the referenced statutory authority, authorizes limited competition when the property or services needed are available from only one responsible source and no other type of property or service will satisfy the needs of the agency.

The Aviation and Transportation Security Act (ATSA) was signed into law on November 19, 2001. TSA employs more than 45,000 security screeners and provides guidance and training to flight crews for dealing with threats on board aircraft. Since February 17, 2002, TSA has been responsible for all civil aviation security functions. Because these tasks are directly related to the security of the national air transportation system, TSA has a critical need to be located on airport property.

5. Description of Efforts to Solicit as Many Offers as Practicable:

Market surveys will be conducted as the need for space arises and the notices required by FAR 5.201 and GSAM 505.202 will be published and any proposals received will be considered.

6. Determination that the anticipated cost will be fair and reasonable:

The cost for the space and any specific improvements shall be deemed to be fair and reasonable by each contracting officer by utilizing any market information available. Each

contracting officer must specifically determine in writing that the contract price for each lease acquired pursuant to this justification is fair and reasonable.

7. Description of the market survey conducted:

As the need for space arises, a market survey will be conducted to determine if space is available that meets the requirements of TSA off of the airport property, and all sources that can deliver the needed space, meeting the requirements of the agency, within the timeframe specified, will be solicited.

8. Other facts supporting the use of other than full and open competition:

None

9. List of sources that expressed an interest in the acquisition:

Not applicable.

10. Statement of actions to overcome barriers to competition:

None.

11. Contracting Officer Certification:

This class justification may be used by GSA contracting activities only when, with respect to the proposed lease contract, the contracting officer certifies as follows: "I certify that this lease contract is within the scope of the class justification for other than full and open competition for the acquisition of administrative and support work space for the Transportation Security Administration (TSA) in response to Public Law 107-71, and that the justification is accurate and complete to the best of my knowledge and belief."

This class justification for other than full and open competition is hereby made and approved in accordance with Section 303 (f) of the Federal Real Property and Administrative Services Act of 1949, as amended (41 U.S.C 253 (f)) and FAR Subpart 6.3.

PREPARED BY:

David Jordan, Analyst, Solutions Development Division
Office of National Customer Services Management (PQC)

APPROVED BY:

St Frihl 9-8-06

Wendy Lieb, Director, Solutions Development Division Office of National Customer Services Management (PQC)

APPROVED BY:

Samuel J. Morris, III,

Associate General Counsel

For Real Property (LR)

APPROVED BY

Christopher Revisishan, Assistant Commissioner

Office of National Customer Services Management (PQ)

APPROVED BY

Emily W. Murphy

Chief Acquisition Officer

APPROVED BY:

David L. Winstead, Commissioner

Public Buildings Service (P)

Notice of Intent to Lease Space Using Other Than Full and Open Competition

The United States Government intends to award a succeeding lease using other than full and open competition for an existing lease for the Transportation Security Administration that is expiring in CITY, STATE at NAME OF AIRPORT.

The Government requires xx,xxx rentable square feet of space yielding a minimum of xx,xxx ANSI/BOMA office area and xx adjacent parking spaces. The space must be located on airport property, be contiguous, and all services, supplies, utilities, partitioning and tenant alterations must be included as part of the rental consideration.

To submit a location for inspection, contact this office by **DATE**. Owners and exclusive agents only.

GENERAL SERVICES ADMINISTRATION

Street

City, State

Attention: NAME OF CONTRACTING OFFICER

Phone: Fax: E-mail:

LIMITED ACQUISITION PLAN (ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY)

1.	Requiring Agency	Transport	ation Security Administration	า
	Location			
2.	Agency Contact Name			
	Telephone Number		() -	
3.	Estimated Square Foota	age (RSF and USF)	RSF /	US
4.	Estimated Lease Term	From:	To:	
5.	Lease Action:			
	extraordinary circul		aart araaartu	
	•		port property.	
PL.	•		port property.	
PL .	Succeeding lease f			
	Succeeding lease f	for continuing need on air		
	AN OF ACTION Results of Market Surve	for continuing need on air	et the agency's needs:	
1.	AN OF ACTION Results of Market Surve On airport property only	for continuing need on air	et the agency's needs:	
1.	AN OF ACTION Results of Market Surve	ey of locations that will me	et the agency's needs:	
1.	Succeeding lease f	ey of locations that will me	et the agency's needs:	
	Succeeding lease f	ey of locations that will me	et the agency's needs:	
1.	Succeeding lease f	ey of locations that will me	et the agency's needs:	
1.	AN OF ACTION Results of Market Surve On airport property only Competition: Full and Open Com X Other Than Full an	ey of locations that will me	et the agency's needs:	
1.	Succeeding lease f	ey of locations that will me	et the agency's needs:	

LIMITED ACQUISITION PLAN (ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY)

4.	New Requirement ☐ or Continuing Need X
	Project # or Current Lease #
	Estimated Annual Rental\$ USF / RSF
	(Total Annual Rent) \$
	Estimate Derived From
	☐ STAR
	Other. Explain how estimate was derived.
	Funding Availability
	Year 1
	Yes
	□ No
	Projected Total Contract Value \$
5.	Environmental/Energy Conservation Objectives:
	List clauses that will be included in the SFO, or provide justification for not including all "Green" lease clauses in the SFO.
	Standard SFO clauses for energy efficiency, recycling, etc.
6.	Other Objectives (i.e., SBTA actions, Customer Regulatory Requirements [i.e., Title 10]):
o.	Describe.
7.	Discuss any conditions peculiar to the lease action [i.e., inclusion of evaluated renewal or
	expansion option(s)]:
8.	Lease Administration:

LIMITED ACQUISITION PLAN (ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY)

C.	MIL	LESTONE EVENT	5	ESTIMATED	ACTUAL
	1.	Space Request F	Received	expiring lease	
	2.	Market Survey		N/A	
	3.	Issuance of Solid	itation		
	4.	Offers Due			
	5.	Final Proposal R	evisions Due		
	6.	Lease Award	01010110 240		_
	7.	Lease Effective			
	8.	Occupancy			
D.		VIEW AND APPRO		easing Specialist	
	Apı	proved by:	ryped Name, Li	easing opecialist	
	•		Typed Name, C	ontracting Officer	Date
	App	proved by:	Typed Name, R	.E. Director/Designee	
	App	proved by:			Date
			Typed Name, A	RA/Designee	Date
	App	proved by:			Date
				isition Policy ernmentwide Policy blans@gsa.gov	Date

ATTACHMENT 4: Regional Environmental Quality Advisors

PBS regional environmental quality advisors (REQAs) are as follows:

R1	David Drevinsky	617-565-6596
R2	Peter Sneed David Anthone	973-645-2413 x256 212-264-1575
R3	Katrina Scarpato MaryAnn Dobbins	215-446-4651 215-446-4649
R4	Phil Youngberg	404-562-0787
R5	Glenn Wittman	312-353-6871
R6	Carlos Salazar	816-823-2305
R7	Larry Rexroat	817-978-7260
R8	Sharon Malloy Lisa Haskins	303-236-8000 x2288 303-236-8000 x2414
R9	Morris Angell Gregory Smith	415-522-3473 619-557-6169
R10	Michael Levine	253-931-7263
NCR	Denise Decker	202-205-5821

These individuals have been briefed on the Floodplain Protocol for TSA's on-airport continuing need requirements. Leasing specialists must contact their REQA as soon as a TSA continuing need request is received.

Protocol: Continuing Need Lease Actions for Transportation Security Administration (TSA) at U.S. Airports in 100-Year Floodplains

Background. GSA will execute the appropriate lease action for the continuing need requirements of TSA in support of its inspection and surveillance mission at U.S. airports. TSA leases typically will not exceed 3,000 square feet at each site and typically will be used as administrative, shift change, and employee break areas. It is known that a number of U.S. airports are located in 100-year floodplains. According to Executive Order (EO) 11988 and the GSA Floodplain Management Desk Guide, GSA must conduct the Federal Emergency Management Agency's eight-step process when locating in a 100-year floodplain. However, since these lease sites are at established airport facilities that have addressed the necessary floodplain mitigation as part of construction or subsequent renovation, GSA will adapt these prior determinations to support its own floodplain determinations. Once adapted, the remaining step for GSA is to inform the public of its action and of any steps that will be taken to minimize the risk to TSA and itself.

Action. The GSA regional environmental quality advisor (REQA) will work closely in partnership with the realty specialists managing this lease process in their region. REQAs may direct questions to Lee Salviski, PBS Office of Applied Science, at 202-302-3248.

In order to expedite compliance with the EO and GSA guidelines on locating space in a 100-year floodplain, the REQA will:

- 1. Verify whether or not the space to be leased is in a 100-year floodplain.
- 2. For leases in 100-year floodplains:
 - a. Contact the airport facility manager to determine any previous floodplain determination efforts and document any mitigation measures implemented to reduce the risk due to floods.
 - b. Complete necessary public notice.
 - c. Issue GSA's determination with attached copies of the airport's previous floodplain determinations.
 - d. Post this GSA Determination Notice at inspection sites so that the public is informed.
- 3. If this lease is in a 500-year floodplain:
 - a. Verify that TSA is not involved in any "critical action."
 - b. Send the TSA regional manager a model letter (see attached) concerning 500-year floodplains and critical actions.

Determination Notice. Notification is provided to the public that the U.S. General Services Administration (GSA) has executed a continuing need lease action for the Transportation Security Administration (TSA), NAME OF AIRPORT, STREET, CITY,

STATE. The lease consists of approximately _____square feet and will be used for administration, shift change, and employee break areas. It has been determined that this facility and the subsequent GSA lease are located in a 100-year floodplain. Presidential Executive Order 11988, Floodplain Management, requires GSA to review its proposed projects for possible alternatives to being located in a floodplain. Since it is mandatory that TSA be physically located within the boundary of the airport property, there are no viable alternative sites that would meet the requirements of TSA. The TSA mission and location requirements are considered a "functionally dependent" use. GSA has reviewed the mitigation measures developed and implemented by the airport facility to minimize the risk associated with being located in a 100-year floodplain. As a result of this review, GSA has determined that TSA and the public using this lease space are at no greater risk from the floodplain location. Public comment may be directed to NAME OF REQA, PHONE, E-MAIL, STREET, CITY, STATE, ZIP CODE, within 30 days of this notice (DATE NOTICE POSTED).

INSTRUCTION: IF THE REGIONAL ENVIRONMENTAL QUALITY ADVISOR HAS DETERMINED THAT THE AIRPORT LOCATION FOR THE PARTICULAR PROCUREMENT IS IN A FLOODPLAIN, THIS LETTER MUST BE PRINTED ON GSA LETTERHEAD WITH THE LEASING SPECIALIST'S CONTACT DETAILS. THE LETTER MUST BE ADDRESSED TO AND CONCURRED ON BY THE REGIONAL OR NATIONAL FACILITIES REPRESENTATIVE FOR TSA.

Dear NAME OF CLIENT CONTACT:

The delineated area for your space requirement at NAME OF AIRPORT, CITY, STATE is located within [insert one of the following: "a 100-year floodplain and a 500-year floodplain" or "a 500-year floodplain"]. Although any potential property purchase or lease is required to consider alternative locations or mitigation methods if located in a 100-year floodplain, so-called "critical actions" are similarly restricted for placement even in a 500-year floodplain. Please see the enclosed excerpt from the Floodplain Management Desk Guide that defines critical actions. In essence, this special classification has an impact on the geographic location of your proposed agency facility or the conditions of your occupancy.

Based on the attached definitions, does your agency consider your proposed use a critical action? If your agency does consider it a critical action, then GSA will need to apply the same analysis required in our Desk Guide and Executive Order 11988 that would be applied if your use were not a critical action and just in the 100-year floodplain.

If you do not consider the proposed use to be a critical action, please sign below where indicated and return to the contracting officer. If you consider the proposed use to be a critical action, please notify the undersigned immediately.

If you have any questions, please call me at		
Sincerely,		
Contracting Officer		
Senior Asset Manager Regional Environmental Quality Advisor		
On behalf of the Transportation Security Administration based on the attached definition.	ration, we do not consider the proposed use a c	critical
Name	Signature	
Title	Date	
Telephone		

Definition of Critical Actions.

The Water Resources Council's Floodplain Management Guidelines for Implementing Executive Order 11988 defines a critical action as any activity for which even a slight chance of flooding would be too great a risk (and therefore should be located outside the 500-year floodplain). Examples include storage of irreplaceable records; storage of volatile, toxic, or water-reactive materials; construction or operation of hospitals and schools; and construction or operation of utilities and emergency services that would be inoperative if flooded. Examples of GSA actions that may be critical actions include, but are not limited to:

- (1) Storage of national strategic and critical materials;
- (2) Storage of irreplaceable records;
- (3) Acquisition of health facilities for client agencies;
- (4) Child care facilities; and
- (5) Public benefit conveyances for schools, prisons, and some other institutional uses.

Considerations:

If flooded, would the proposed action create an added dimension to the disaster, as could be the case for liquefied natural gas terminals and facilities producing and storing highly volatile, toxic, or water-reactive materials?

Given the flood warning lead-time available, would the occupants of buildings such as hospitals, schools, and nursing homes be insufficiently mobile to avoid loss of life and injury?

Would essential and irreplaceable records be lost? Would utilities or emergency services stop operating if flooded?

Many of GSA's general clauses are the same as the "sponsor assurances" required by the Federal Aviation Administration when airports accept funds from FAA-administered programs. To assist the realty specialist, the list below identifies those clauses that are mandatory by law as well as those clauses contained in both GSA Form 3517, General Clauses (Acquisition of Leasehold Interests in Real Property), and the FAA Grant Assurances. Regional counsel must approve any modification or deletion of any clause in the GSA Form 3517.

MANDATORY CLAUSES BY STATUTE

GSA General Clause (11/2005 version)	48 CFR ref.	FAA Assurances (3/2005 version)	GSA Clause Required by Statute
Central Contractor Registration	52.204-7	None (however, GSA cannot pay without it)	
Covenant Against Contingent Fees	552.203-5	None (however, imposes no additional burden on airport)	41 U.S.C. 254(a)
Anti-Kickback Procedures	52.203-7	Section C.1.t.	41 U.S.C. 51-58
Drug-Free Workplace	52.222-6	Section C.1.x.	Drug-Free Workplace Act of 1998
Audit and Records – Negotiation	52.215-2	OMB Circular A-133, Section C.1.w. ¹ , and Section C.13	41 U.S.C. 254d(c)
Equal Opportunity	52.222-26	Section C.1 Executive Orders	41 CFR 60-1.4
Preaward On-Site Equal Opportunity Compliance	52.222-24	None (but only applies to leases > \$10M)	FAR 22.810 and 41 CFR 60-1.20
Prohibition of Segregated Facilities	52.222-21	Section C.1.n.	FAR 22.810
Equal Opportunity for Disabled Veterans and Veterans of the Vietnam Era	52.222-35	Section C.1 Federal Regulations (g) and Section C.15	41 CFR 60-250.5
Affirmative Action for Workers with Disabilities	52.222-36	Section C.1.m and Section C.30	41 CFR 60-741.4
Utilization of Small Business Concerns	52.219-8	Section C.1 Federal Regulations (m)	15 U.S.C. 637(d) and FAR 19.708
Small Business Subcontracting Plan	52.219-9	None	15 U.S.C. 637(d) and FAR 19.708
Liquidated Damages – Subcontracting Plan	52.219-16	None	15 U.S.C. 637(d)(4)(F) and FAR 19.708

¹ FAA Clause C.1.w. does not apply to private sponsors.

ATTACHMENT 7: FAA Sponsor Assurances Summary

DISCRETIONARY GSA CLAUSES THAT ARE ALSO FAA CLAUSES

GSA General Clause (11/2005 version)	48 CFR ref.	FAA Assurances (3/2005 version)
Examination of Records by GSA	552.215-70	Clause C.13
Protecting the Government's Interest when Subcontracting with Contractors Debarred	52.209-6	Clause C.1. Federal Regulations (h)